

United States District Court

for the

Eastern District of Washington

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 29, 2022

SEAN F. McAVOY, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: Timothy A. Shelly

Case Number: 0980 2:09CR00089-RHW-1

Name of Sentencing Judicial Officer: The Honorable Robert H. Whaley, Senior U.S. District Judge

Date of Original Sentence: November 18, 2010

Type of Supervision: Supervised Release

Original Offense: Coercion of a Minor, 18 U.S.C. § 2422(b); Travel with Intent to Have Sex with a Minor, 18 U.S.C. § 2423(b)

Date Supervision Commenced: October 14, 2019

Original Sentence: Prison - 12 years
TSR - Life

Date Supervision Expires: Life

PETITIONING THE COURT

To modify the conditions of supervision as follows:

- 32 You must allow the probation officer to install monitoring software on any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of “sexually explicit conduct” (as defined by 18 U.S.C. § 2256(2)) involving children, or “actual sexually explicit conduct” (as defined by 18 U.S.C. § 2257(h)(1)) involving adults.
- 33 To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches on any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of “sexually explicit conduct” (as defined by 18 U.S.C. § 2256(2)) involving children, or “actual sexually explicit conduct” (as defined by 18 U.S.C. § 2257(h)(1)) involving adults. These searches shall be conducted to determine whether the computer contains any prohibited data prior to installation of the monitoring software, whether the monitoring software is functioning effectively after its installation, and whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.
- 34 You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

CAUSE

On November 18, 2010, Your Honor sentenced Timothy A. Shelly to 12 years imprisonment, followed by a life term of supervised release, after he pled guilty to coercion of a minor and travel with intent to have sex with a minor. The offender commenced his term of supervised release on October 14, 2019.

On August 12, 2019, this officer submitted a request for modifying the conditions of supervision with consent of the

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offender to the Court. As noted in that report, it was requested that three additional conditions of supervision be ordered, to include a condition allowing the supervising probation officer to conduct periodic random inspections of the offender's computer and any internal or external peripherals.

Pursuant to the 9th Circuit Court's decision in *United States v. Wells*, 29 F.4th 580 (9th Cir. 2022), the above-listed special conditions have been revised to include language clarifying the definition of a "computer."

Additionally, Mr. Shelly's current conditions of supervision require that he participate in polygraph testing while he is engaged in sex offender treatment "in order to measure compliance with the treatment program requirements." He has done very well in sex offender treatment and is currently only meeting with the treatment provider as needed. Regardless, because of the nature of the offender's underlying federal offense, this officer would opine that his continued engagement in regularly scheduled polygraph testing would provide Mr. Shelly with the accountability necessary to avoid violating the conditions of his supervision or committing a new law violation. Mr. Shelly agreed, and as such, the aforementioned special conditions are respectfully recommended with the permission of Mr. Shelly, as evidence by the attached waiver of hearing to modify conditions.

Respectfully submitted,

by s/Amber M.K. Andrade

Amber M. K. Andrade
U.S. Probation Officer
Date: September 27, 2022

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above
- ☒ The Modification of Conditions as Noted Above
- ☐ Other



Signature of Judicial Officer

09/29/2022

Date

United States District Court

Eastern District of Washington

Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

To modify the conditions of supervision as follows:

- 32 You must allow the probation officer to install monitoring software on any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of "sexually explicit conduct" (as defined by 18 U.S.C. § 2256(2)) involving children, or "actual sexually explicit conduct" (as defined by 18 U.S.C. § 2257(h)(1)) involving adults.
- 33 To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches on any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of "sexually explicit conduct" (as defined by 18 U.S.C. § 2256(2)) involving children, or "actual sexually explicit conduct" (as defined by 18 U.S.C. § 2257(h)(1)) involving adults. These searches shall be conducted to determine whether the computer contains any prohibited data prior to installation of the monitoring software, whether the monitoring software is functioning effectively after its installation, and whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.
- 34 You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

Witness:



Amber M. K. Andrade
U.S. Probation Officer

Signed:



Timothy A. Shelly
Probationer or Supervised Releasee

9/19/22

Date